

*a***ARAB-MALAYSIAN BANK BHD****v.****TEAMSYSYSTEMS INTERIOR SDN BHD & ORS**

HIGH COURT MALAYA, KUALA LUMPUR

b

ABDUL WAHAB SAID JC

[CIVIL SUIT NO: D8-22-437-2001]

26 MARCH 2004

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CIVIL PROCEDURE: *Summary judgment - Appeal - Plaintiff's claim for balance due from credit facilities granted to 1st defendant - Assignment, deed of - Whether triable issues existed - Rules of the High Court 1980, O. 14*

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This was an appeal by the plaintiff against the senior assistant registrar's order dismissing the plaintiff's application under O. 14 of the Rules of the High Court 1980 against the defendants for the balance owing from four credit facilities granted by the plaintiff to the 1st defendant, with the 2nd and 3rd defendants being the guarantors. The defendants contended that the facilities were for the purpose of financing a tender that they had obtained from one Kia Peng Development Sdn Bhd ('Kia Peng') and that they had signed a deed of assignment for the amount of RM8,280,000 *ie*, the value of the entire contract, to the plaintiff in consideration of the facilities. The value of the contract was

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also the amount that was payable by Kia Peng with regard to the project. The defendants, therefore, averred that the plaintiff should be suing Kia Peng instead of them since under the deed of assignment, all the defendant's rights, including the right to sue under the contract between them and Kia Peng, was vested in the plaintiff.

*f***Held (dismissing the plaintiff's appeal):***g*

[1] The deed of assignment was an absolute assignment; therefore, the defendants were not competent in maintaining the action against Kia Peng to recover the balance due for the works undertaken to settle the outstanding balance on the credit facilities owed to the plaintiff. The action could only be brought by the plaintiff in its own name or in the name of the assignor. The inability of the first defendant to sue for the amount from Kia Peng to settle the facilities granted by the plaintiff solely for this project was an issue that should be tried. Thus, the plaintiff's O. 14 application ought to be dismissed. (p 234 g-h)

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Case(s) referred to:

Nouvau Mont Dor (M) Sdn Bhd v. Faber Development Sdn Bhd [1984] 2 MLJ 268

Legislation referred to:

Civil Law Act 1956, s. 4(3)

Rules of the High Court 1980, O. 14

For the plaintiff - Mohd Azlisham Jaafar; M/s Abd Aziz Chen & Co

For the defendants - Ho Eu Ghee (Patrick Chai); M/s Michael Chai & Co

Reported by Suresh Nathan

JUDGMENT

Abdul Wahab Said JC:

This is an appeal by the plaintiff against my decision where I affirmed the order of the SAR, dismissing its O. 14 application against the 1st and 2nd defendants.

The plaintiff's claim against the defendants on four facilities granted by the plaintiff to the 1st defendant through a facilities agreement dated 23 August 1999. The 2nd and 3rd defendants are guarantors *vide* an Indemnity and Guarantee dated 23 August 1999.

The amounts claimed are:

- (a) Overdraft Facilities until 31 December 2000 amounting to RM262,343.49 with interest;
- (b) Revolving Credit Facilities until 31 December 2000 amounting to RM415,750.13 with interest;
- (c) Inward Bill Advance Facilities until 31 December 2000 amounting to RM205,505.80 with interest;
- (d) Trust Loan Facilities until 31 December 2000 amounting to RM528,146.30 with interest.

In their defence, the defendants said that the Loan Facilities are for the purpose of financing the tender that they obtained from Kia Peng Development Sdn. Bhd. for Interior Design of service apartments at Sri Kia Peng.

According to the defendants, they had signed a Deed of Assignment dated 23 August 1999 for the amount of RM8,280,000, ie, the value of the entire contract to the plaintiff in consideration of the said facilities. The value of the contract is also the amount that is payable by Kia Peng Development Sdn Bhd on the project. Therefore, the defendants said that the plaintiff should be suing Kia Peng Development Sdn Bhd instead of them.

- a* The defendants referred in particular to Article III, Section 3.01 Deed of Assignment where all the defendant's rights, including the right to sue under the contract between them and Kia Peng Development Sdn Bhd, is vested in the plaintiff.

Section 3.01 of Deed of Assignment reads:

- b* Pursuant to the Facilities Agreement and in consideration of AMBB agreeing to make and/or continuing to make the Facilities available to the Assignor upon the terms and conditions contained in the Facilities Agreement and hereinafter contained the Assignor HEREBY ASSIGNS unto AMBB absolutely free from all claims equities or encumbrances whatsoever all its rights title and interests and benefits in and to the whole of the Assigned Sums and the
- c* Assigned Rights **including the right to sue under the Preliminary Contract and/or Main Contract** together with all such rights and remedies of the Assignor for the recovery of the payment of all principal sums, interest thereon and any other moneys and liabilities whatsoever owing or payable by the
- d* Assignor to AMBB in respect of the Facilities or otherwise intended to be secured by this Deed of Assignment and all costs charges and other expenses which AMBB may pay or incur in registering this Deed of Assignment and any other related instruments or in perfecting the present securities or in enforcing or obtaining payment of the moneys or any part thereof hereby assigned or in paying any expenses or outgoings whatsoever in defending
- e* prosecuting instituting proceedings or otherwise taking part in or attending at (whether on a watching brief as observer or otherwise) any action enquiry hearing suit or other proceedings whatsoever affecting the Assignor and/or the subject matter of this Deed of Assignment and upon the terms and conditions hereinafter contained.

- f* Defendant contended that plaintiff's action should be against Kia Peng Development Sdn Bhd which owed defendant more than RM1 million under the contract.

In *Nouvau Mont Dor (M) Sdn Bhd v. Faber Development Sdn Bhd* [1984] 2 MLJ 268 the court held that whether or not an assignment is an absolute one (not purporting to be by way of charge only) within the meaning of s. 4(3) of Civil Law Act 1956 is to be gathered from the four corners of the instrument itself.

- g* The Deed of Assignment is an absolute assignment. The defendants are therefore not competent to maintain the action against Kia Peng Sdn Bhd to recover the balance due for the works undertaken to settle the outstanding balance on the credit facilities to plaintiff. The action could only be brought by the plaintiff
- h* in its own name or in the name of the assignor. The inability of defendant (1) to sue for the amount from Kia Peng Development Sdn Bhd to settle the facilities granted by plaintiff solely for this project is an issue that should go for trial.

For the above reasons, I dismissed the plaintiff's appeal against the order of the deputy registrar rejecting the O. 14 application against defendants (1) and

i (2) with costs.